104TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
104–643

CONVEYANCES OF LANDS TO CERTAIN NATIVE VILLAGES UNDER THE ALASKA NATIVE CLAIMS SETTLEMENT ACT

JUNE 27, 1996.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. YOUNG of Alaska, from the Committee on Resources, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 2560]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 2560) to provide for conveyances of certain lands in Alaska to Chickaloon-Moose Creek Native Association, Inc., Ninilchik Native Association, Inc., Seldovia Native Association, Inc., Tyonek Native Corporation, and Knikatnu, Inc. under the Alaska Native Claims Settlement Act, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

That section 4 of Public Law 94–456 (43 U.S.C. 1611 note) is amended—

(1) by striking out "subsection (a)" in subsection (c) and inserting in lieu thereof "subsections (a) and (d)"; and

(2) by adding at the end the following:

"(d)(1) In order to convey to the Village Corporations named in this subsection certain lands the Villages have selected under section 12(a) of the Settlement Act, the Secretary shall convey all right, title, and interest of the United States in and to the surface estate of the lands described in paragraph (2) to the Village Corporations within Cook Inlet Region named in paragraph (2) in partial satisfaction of each Village Corporation's statutory entitlement under section 12(a) of the Settlement Act. Conveyances shall be made pursuant to sections 12(a) and 14(f) of the

Settlement Act. The conveyances described in paragraph (2) shall be made within 90 days after the date of enactment of this subsection.

"(2) The lands described in this paragraph are to be conveyed to Village Corporations as follows:

To Chickaloon-Moose Creek Native Association, Inc.:

SEWARD MERIDIAN, ALASKA

Township 1 North, Range 20 West (Unsurveyed)
Sections 24, 25, and 36 (fractional).

To Knikatnu, Inc.:

SEWARD MERIDIAN, ALASKA

Township 1 South, Range 20 West (Unsurveyed)
Section 1 (fractional).
Township 3 South, Range 20 West (Unsurveyed)
Section 3 (fractional);
Sections 4 and 9.
Township 1 North, Range 20 West (Unsurveyed)
Section 9 (fractional).

To Ninilchik Native Association, Inc.:

SEWARD MERIDIAN, ALASKA

Township 1 South, Range 19 West (Unsurveyed)
Sections 29 and 32 (fractional).
Township 2 South, Range 19 West (Unsurveyed)
Sections 6 and 18 (fractional).
Township 2 South, Range 20 West (Unsurveyed)
Section 1 (fractional);
Sections 6 and 14;
Sections 23, 24, and 26 (fractional);
Sections 32 and 33;
Sections 34 and 35 (fractional).
Township 3 South, Range 20 West (Unsurveyed)
Section 10 (fractional).
Township 3 South, Range 21 West (Unsurveyed)
Sections 13 and 19 through 24, inclusive;
Section 25 (fractional);
Sections 32 and 34 (fractional).
Township 1 North, Range 20 West (Unsurveyed)
Sections 6 through 8 (fractional), inclusive;
Section 16;
Sections 22 and 23 (fractional);
Section 26.
Township 4 North, Range 19 West (Unsurveyed)
Sections 20 and 36.

To Seldovia Native Association, Inc.:

SEWARD MERIDIAN, ALASKA

Township 2 South, Range 20 West (Unsurveyed)
Section 13 (fractional).
Township 3 South, Range 20 West (Unsurveyed)
Sections 7 and 8;
Section 16 (fractional);
Sections 17 and 18;
Sections 19 and 20 (fractional).

To Tyonek Native Corporation:

SEWARD MERIDIAN, ALASKA

Township 1 South, Range 20 West (Unsurveyed)
Section 2 (fractional);
Section 3.
Township 2 South, Range 21 West (Unsurveyed)
Section 36.
Township 2 South, Range 20 West (Unsurveyed)
Section 12 (fractional);
Section 31.

Township 3 South, Range 20 West (Unsurveyed)
Sections 15, 21, and 30 (fractional).
Township 3 South, Range 21 West (Unsurveyed)
Section 26;
Sections 27 and 28 (fractional);
Sections 29 through 31 (fractional), inclusive;
Sections 33, 35, and 36 (fractional).
Township 1 North, Range 20 West (Unsurveyed)
Section 15 (fractional);
Section 35.
Aggregating approximately 29,900 acres, more or less.

"(3) No later than 180 days following the completion of the conveyances required by paragraph (1), Cook Inlet Region, Inc., shall convey to each of the Village Corporations referred to in paragraph (2) the surface estate in such lands described in Appendix A of that certain Agreement dated August 31, 1976, known as the Deficiency Agreement, as the Village Corporations have identified, and in the order they identified in their priority selection rounds, to satisfy each Village Corporation's section 12(a) entitlement under the Settlement Act.

"(4) If the Secretary does not convey the lands in paragraph (2) within 90 days of the date of the enactment of this subsection, then all right, title, and interest of the United States in and to the surface estate of such lands shall nevertheless pass immediately to the Village Corporations named in paragraph (2).

"(5) Nothing in this subsection shall be construed to increase or decrease the entitlement under the Settlement Act of any of the Village Corporations named in this subsection or of Cook Inlet Region, Inc.".

PURPOSE OF THE BILL

The purpose of H.R. 2560 is to resolve longstanding land allocation and conveyance issues affecting six Alaska Native village corporations in the Cook Inlet region of Alaska. These issues are resolved by amending the Alaska Native Claims Settlement Act (ANCSA) which requires the Department of the Interior to complete land conveyances to the affected Alaska Native village corporations within a specific time and based on preexisting selections.

BACKGROUND AND NEED FOR THE LEGISLATION

In 1971, ANCSA was enacted to resolve all outstanding land claims by Alaska Natives. It was intended to settle existing aboriginal land claims, provide a prompt and fair settlement and avoid exhaustive litigation. Under a land conveyance process established by the Department of the Interior, Native villages selected and prioritized lands pursuant to provisions of the Act.

From the onset of ANCSA's implementation, there were extreme difficulties encountered in adequately fulfilling the land entitlements of the Cook Inlet region and the villages within the Cook Inlet Region. Under the Alaska Statehood Act, the State had already obtained patents to much of the low-lying lands in the region, except for lands within the Kenai National Moose Range. In addition, the Secretary of the Interior, in agreement with the State of Alaska in 1972, committed additional lands to the State even though there had not yet been withdrawn sufficient lands for Cook Inlet Region or for the villages within the region. Village selections were further limited by Federal withdrawals for public purposes such as the Kenai National Moose Range, Chugach National Forest, Fort Richardson and Elmendorf Air Force Base. Because customary and traditional lands in and around the villages were not available, the Secretary of the Interior was forced to designate "in-

lieu" withdrawal areas for Cook Inlet Native selections. The subsequent efforts of the Secretary to fulfill his statutory obligation to Cook Inlet Region yielded for the region selections largely comprised of mountains and glaciers, hardly the settlement contemplated by Congress.

In 1974, just prior to the selection deadline established by ANCSA, the village corporations, with support and technical assistance from the Bureau of Land Management, made their in-lieu or deficiency selections outside the local selection area. Deficiency selections were made by a series of rounds with each of the six participating villages selecting approximately 800 acres in each round, until their entitlement acreage was met.

From initial selections in 1974 to the present date, the village selection priorities have never been amended or changed in any way. All six villages have steadfastly held to the original priorities.

Prior to the village deficiency selections in 1974, in early 1972 the Region and the villages began attempting to resolve the difficulties encountered in fulfilling entitlement by litigation, negotiation and finally legislation.

The Joint Federal/State Land Use Planning Commission for Alaska, which was instrumental in settling land claims at the time, recognized the significance of the issues at stake and endorsed a three-way negotiated settlement struck among the affected parties. In 1975, the State of Alaska, the Department of the Interior and Cook Inlet Region, Inc. (CIRI) agreed upon the largest land exchange in American history. The "Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area" was enacted by Congress as Public Law 94–204, an amendment to ANCSA, and approved by the Alaska Legislature in 1976.

From the Federal Government's perspective, a centerpiece of the land exchange was the "Lake Clark Tradeout" under which all Cook Inlet village selections were removed from the heart of the proposed Lake Clark National Park, thus creating a public land ownership pattern which made establishment of the park a realistic possibility. To facilitate removal of village selections from Lake Clark, CIRI and the State both gave up claims to certain prime lands adjacent to the villages, in the Matanuska and Susitna Valleys and on the Kenai Peninsula. In addition, under the terms of the land exchange, the Region and the State contractually bound themselves to support creation of the Lake Clark National Park which was eventually established by Congress in 1980.

The land exchange also allowed the possibility of an exchange among certain villages within the region and the Department of the Interior for lands selected by those villages on the coast of Cook Inlet along the boundary of the proposed park. All parties in 1976 anticipated that these lands would be conveyed to the villages. A provision of the land exchange specified that CIRI and the Secretary would seek legislation to allow the United States to acquire lands selected by village corporations within the boundaries of the park, but only with the consent of the appropriate village corporations.

In negotiating the land exchange, all of the concerned parties assumed that the specific selections made by the region and the villages within the existing withdrawals for region and village selec-

tions were correct. Indeed, several provisions of the land exchange were based, in part, on the assumption that the village selections, which had been made in 1974, were valid. However, in May of 1976, the Bureau of Land Management (BLM) issued several decisions rejecting portions of the village selections on dubious technical grounds. BLMs decisions were unexpected and were strongly criticized both inside and outside the Department of the Interior. To correct the injustice of the BLM decisions rejecting a portion of the selections of the village corporations, the villages entered into an agreement with CIRI and CIRI entered into a separate agreement with the Department of the Interior. This separate agreement (known as the 1976 Deficiency Agreement) was designed to overcome technical objections which the BLM had raised and to validate the original selections made by the village corporations. Legislation authorizing this agreement between CIRI and the Department of the Interior was enacted by Congress in Public Law 94–456, an amendment to ANCSA.

Following passage of this legislation, the Native villages of Tyonek, Knikatnu, Chickaloon-Moose Creek, Seldovia, Salamatof and Ninilchik relinquished selections they previously had made around Lake Clark as had been required by Congress in Public Law 94–204 before the land exchanges could take effect. The willingness of the villages to relinquish these selections played a critical role in the establishment and development of Lake Clark National Park. In relinquishing these selections, the villages assumed that the Department of the Interior would fulfill its part of the bargain and convey approximately 29,900 acres of high-priority lands that the villages had selected in 1974 along the west coast of Cook Inlet. It was these selections as well as others that Public Law 94–456 authorized to be conveyed. Although for many years the Department proceeded in accordance with the understanding that these 29,900 acres would be conveyed to the village corporations, the Secretary of the Interior, based on a new interpretation of the agreement between CIRI and the Department that had been authorized by Public Law 94–456, has recently questioned whether the Department has the authority to convey these lands. The purpose of this legislation is to make clear that the Secretary does have such authority and to make explicit that the 29,900 acres at issue should and must be conveyed to the appropriate village corporations.

The issue that this bill proposes is one of equity. The Native villages involved were acting as good citizens in initially relinquishing Lake Clark selections to facilitate establishment of the National Park. They did so under the promise that they would be afforded the opportunity to obtain the selections that they had made on the coast of Cook Inlet long before the creation of the park. This bill assures that the villages are treated fairly. The bill further assures that the villages receive no more land than that to which they are statutorily entitled under ANCSA, and that no over-conveyance will occur.

COMMITTEE ACTION

H.R. 2560 was introduced on October 30, 1995, by Congressman Don Young (R–AK). The bill was referred to the Committee on Re-

sources. On November 7, 1995, the Committee held a hearing on H.R. 2560 that included witnesses from the U.S. Department of the Interior and the affected Native villages. On April 25, 1996, the Committee met to mark up H.R. 2560. Congressman Young offered an amendment in the nature of a substitute, which was adopted by voice vote. The bill as amended was then ordered favorably reported to the House of Representatives in the presence of a quorum by a rollcall vote of 26 to 13 as follows:

Members	Yeas	Nays	Present	Members	Yeas	Nays	Present
Mr. Young (Chairman)	X			Mr. Miller		X	
Mr. Tauzin	X			Mr. Markey		X	
Mr. Hansen				Mr. Rahall			
Mr. Saxton				Mr. Vento		X	
Mr. Gallegly	X			Mr. Kildee		X	
Mr. Duncan				Mr. Williams		X	
Mr. Hefley	X			Mr. Gejdenson		X	
Mr. Doolittle	X			Mr. Richardson		X	
Mr. Allard	X			Mr. DeFazio		X	
Mr. Gilchrest	X			Mr. Faleomavaega	X		
Mr. Calvert	X			Mr. Johnson		X	
Mr. Pombo	X			Mr. Abercrombie	X		
Mr. Torkildsen	X			Mr. Studds			
Mr. Hayworth	X			Mr. Ortiz	X		
Mr. Cremeans				Mr. Pickett	X		
Mrs. Cubin	X			Mr. Pallone		X	
Mr. Cooley	X			Mr. Dooley	X		
Mrs. Chenoweth	X			Mr. Romero-Burceló	X		
Mrs. Smith				Mr. Hinchey		X	
Mr. Radanovich	X			Mr. Underwood			
Mr. Jones	X			Mr. Farr		X	
Mr. Thornberry	X			Mr. Kennedy		X	
Mr. Hastings	X						
Mr. Metcalf	X						
Mr. Longley							
Mr. Shadegg	X						
Mr. Ensign							

SECTION-BY-SECTION ANALYSIS

Section 4 of Public Law 94–456 (43 U.S.C. 1611 note) is amended as follows:

New subsection (d)(1) directs the Secretary of the Interior to convey all Federal right, title and interest to certain surface estates to five Native village corporations in the Cook Inlet Region of Alaska. The subsection also further directs the conveyance to be made within 90 days of enactment of this subsection.

This subsection confirms that lands to be conveyed by the Secretary represent 20-year-old priority selections that are in partial satisfaction of each village corporation's statutory entitlement under section 12(a) of the Alaska Claims Settlement Act (ANCSA).

Finally, this subsection reinstates provisions in ANCSA that mandate subsurface estates under section 12(a) conveyances go to the appropriate regional corporation.

New subsection (d)(2) identifies the village corporations receiving the conveyances and describes the geographic location of each conveyance by township, range and section. The subsection also provides an aggregate of the approximate acres to be conveyed (29,900).

New subsection (d)(3) requires that Cook Inlet Region, Inc., within 180 days after the conveyance by the Secretary of the Interior, reconvey the remaining surface estate in Appendix A of the 1976 Deficiency Agreement in the order the Native villages identified in their priority selections.

New subsection (d)(4) directs that all right, title and interest of the United States to the lands described automatically transfer to the Native corporations if the Secretary fails to convey within 90 days.

New subsection (d)(5) clarifies that the bill does not affect the village corporations' or CIRI's statutory land entitlement pursuant to ANCSA.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to the requirements of clause 2(l)(3) of rule XI of the Rules of the House of Representatives, and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that the enactment of H.R. 2560 will have no significant inflationary impact on prices and costs in the operation of the national economy.

COST OF THE LEGISLATION

Clause 7(a) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out H.R. 2560. However, clause 7(d) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974.

COMPLIANCE WITH HOUSE RULE XI

1. With respect to the requirement of clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, H.R. 2560 does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

2. With respect to the requirement of clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform and Oversight on the subject of H.R. 2560.

3. With respect to the requirement of clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 2560 from the Director of the Congressional Budget Office.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 7, 1996.

Hon. DON YOUNG,
Chairman, Committee on Resources,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 2560, a bill to provide for conveyances of certain lands in Alaska to Chickaloon-Moose Creek Native Association, Inc., Ninilchik Native Association, Inc., Seldovia Native Association, Inc., Tyonek Native Corporation, and Knikatnu, Inc. under the Alaska Native Claims Settlement Act, as ordered reported by the House Committee on Resources on April 25, 1996. CBO estimates that implementing this bill would cost the federal government less than $1 million, subject to the availability of appropriated funds. H.R. 2560 would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply.

H.R. 2560 would address the legal dispute regarding different interpretations of the 1976 Deficiency Conveyance Agreement by the Cook Inlet Region, Inc. (CIRI), its Native villages, and the Department of the Interior. It would direct the Secretary of the Interior to convey all federal right, title, and interest to certain surface estate to five Native village corporations in the Cook Inlet Region of Alaska. If the Secretary does not complete the conveyance within 90 days, the land would automatically transfer to the Native corporations. In addition, the bill would require that CIRI reconvey any remaining surface estate established in the 1976 agreement, authorized by Public Law 94–456, in the order that the Native villages identified in their priority selections. Before the conveyance could take place, the federal government would have to survey the land, at a cost of about $500,000, subject to the availability of appropriated funds. CBO estimates that enacting the bill would not cause any loss of receipts because all of the land in question is in Lake Clark National Park, which is remote and does not charge any types of fees to the public.

H.R. 2560 contains no new intergovernmental or private sector mandates as defined in Public Law 104–4 and would impose no direct costs on state, local, or tribal governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Rachel Robertson.

Sincerely,

JUNE E. O'NEILL, *Director.*

COMPLIANCE WITH PUBLIC LAW 104–4

H.R. 2560 contains no unfunded mandates.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted

is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ACT OF OCTOBER 4, 1976

AN ACT To amend the Alaska Native Claims Settlement Act to provide for the withdrawal of lands for the village of Klukwan, Alaska, and for other purposes.

* * * * * * *

SEC. 4. (a) * * *

* * * * * * *

(c) Conveyances made under the authority of [subsection (a)] *subsections (a) and (d)* of this section shall be considered conveyances under the Settlement Act and subject to the provisions of that Act, except as provided by this Act.

(d)(1) In order to convey to the Village Corporations named in this subsection certain lands the Villages have selected under section 12(a) of the Settlement Act, the Secretary shall convey all right, title, and interest of the United States in and to the surface estate of the lands described in paragraph (2) to the Village Corporations within Cook Inlet Region named in paragraph (2) in partial satisfaction of each Village Corporation's statutory entitlement under section 12(a) of the Settlement Act. Conveyances shall be made pursuant to sections 12(a) and 14(f) of the Settlement Act. The conveyances described in paragraph (2) shall be made within 90 days after the date of enactment of this subsection.

(2) The lands described in this paragraph are to be conveyed to Village Corporations as follows:

To Chickaloon-Moose Creek Native Association, Inc.:

SEWARD MERIDIAN, ALASKA

Township 1 North, Range 20 West (Unsurveyed)
Sections 24, 25, and 36 (fractional).

To Knikatnu, Inc.:

SEWARD MERIDIAN, ALASKA

Township 1 South, Range 20 West (Unsurveyed)
Section 1 (fractional).
Township 3 South, Range 20 West (Unsurveyed)
Section 3 (fractional);
Sections 4 and 9.
Township 1 North, Range 20 West (Unsurveyed)
Section 9 (fractional).

To Ninilchik Native Association, Inc.:

SEWARD MERIDIAN, ALASKA

Township 1 South, Range 19 West (Unsurveyed)
Sections 29 and 32 (fractional).
Township 2 South, Range 19 West (Unsurveyed)
Sections 6 and 18 (fractional).
Township 2 South, Range 20 West (Unsurveyed)
Section 1 (fractional);
Sections 6 and 14;
Sections 23, 24, and 26 (fractional);

Sections 32 and 33;
Sections 34 and 35 (fractional).
Township 3 South, Range 20 West (Unsurveyed)
Section 10 (fractional).
Township 3 South, Range 21 West (Unsurveyed)
Sections 13 and 19 through 24, inclusive;
Section 25 (fractional);
Sections 32 and 34 (fractional).
Township 1 North, Range 20 West (Unsurveyed)
Sections 6 through 8 (fractional), inclusive;
Section 16;
Sections 22 and 23 (fractional);
Section 26.
Township 4 North, Range 19 West (Unsurveyed)
Sections 20 and 36.

To Seldovia Native Association, Inc.:

SEWARD MERIDIAN, ALASKA

Township 2 South, Range 20 West (Unsurveyed)
Section 13 (fractional).
Township 3 South, Range 20 West (Unsurveyed)
Sections 7 and 8;
Section 16 (fractional);
Sections 17 and 18;
Sections 19 and 20 (fractional).

To Tyonek Native Corporation:

SEWARD MERIDIAN, ALASKA

Township 1 South, Range 20 West (Unsurveyed)
Section 2 (fractional);
Section 3.
Township 2 South, Range 21 West (Unsurveyed)
Section 36.
Township 2 South, Range 20 West (Unsurveyed)
Section 12 (fractional);
Section 31.
Township 3 South, Range 20 West (Unsurveyed)
Sections 15, 21, and 30 (fractional).
Township 3 South, Range 21 West (Unsurveyed)
Section 26;
Sections 27 and 28 (fractional);
Sections 29 through 31 (fractional), inclusive;
Sections 33, 35, and 36 (fractional).
Township 1 North, Range 20 West (Unsurveyed)
Section 15 (fractional);
Section 35.

Aggregating approximately 29,900 acres, more or less.

(3) No later than 180 days following the completion of the conveyances required by paragraph (1), Cook Inlet Region, Inc., shall convey to each of the Village Corporations referred to in paragraph (2) the surface estate in such lands described in Appendix A of that certain Agreement dated August 31, 1976, known as the Deficiency Agreement, as the Village Corporations have identified, and in the order they identified in their priority selection rounds, to satisfy

each Village Corporation's section 12(a) entitlement under the Settlement Act.

(4) If the Secretary does not convey the lands in paragraph (2) within 90 days of the date of the enactment of this subsection, then all right, title, and interest of the United States in and to the surface estate of such lands shall nevertheless pass immediately to the Village Corporations named in paragraph (2).

(5) Nothing in this subsection shall be construed to increase or decrease the entitlement under the Settlement Act of any of the Village Corporations named in this subsection or of Cook Inlet Region, Inc.

DISSENTING VIEWS

The Committee on Resources has a long, bipartisan record of legislation concerning Native Alaskans. Unfortunately, this bill departs from that tradition, and the Majority would dictate a gift of 29,900 of national park lands to private corporations which is not justified on legal, equitable or policy grounds.

This legislation was first introduced as H.R. 1342, to provide for conveyance of lands within the boundaries of Lake Clark National Park to Cook Inlet Region, Inc. (CIRI), one of the most financially successful Alaska Native regional corporations. Apparently in order to present a more sympathetic case to Members, the park land conveyance was reconfigured in H.R. 2560 to give the surface directly to five village corporations and the subsurface to CIRI.

The crux of the legal issue in this matter is the interpretation of "Appendix C" of a 1976 Deficiency Conveyance Agreement between CIRI and the Secretary of the Interior. Although the Majority purports to be implementing the 1976 agreement to overcome a recalcitrant Department bureaucracy, they are instead effectively rewriting the deal to convey nearly 30,000 acres of national park lands from "Appendix C" even though the corporations' land entitlements have already been satisfied by "Appendix A" conveyances to CIRI which, pursuant to the agreement, should have been reconveyed to the five village corporations.

As Interior Solicitor John Leshy testified before the Committee on November 7, 1995 in opposition to H.R. 2560:

> H.R. 2560 raises substantial issues of public policy and fairness. It would strike down the carefully crafted, mutually bargained for 1976 Agreement (Agreement) between the Department and the Cook Inlet Region, Inc. (CIRI) to resolve [Alaska Native Claims Settlement Act (ANCSA)] land issues. It would replace the agreement with a new disposition of lands. It would result in an overconveyance of lands to both the villages and CIRI and is contrary to the terms of the Agreement and ANCSA. By reordering ANCSA settlements, it establishes a dangerous precedent that threatens to undermine nearly a quarter century of ANCSA implementation, including many conveyances and agreements, in order to effectively increase ANCSA entitlements and to relocate holdings to increase value. As a result, it could bring serious consequences for Native, public, and private land managers across Alaska who have made decisions based on ANCSA and upon agreed-upon settlements to disputes that have occasionally arisen over its implementation.

Subsequent to the Committee's April 25 vote on H.R. 2560, the U.S. Court of Federal Claims has upheld Interior's legal position.

In *Seldovia Native Association, Inc.* v. *The United States* (May 30, 1996, No. 92–130L) the court addressed this precise issue of whether village corporations were entitled to select lands from "Appendix C":

> As for plaintiff's desire for selections in Appendix C to the CIRI/Interior Deficiency Agreement, that agreement states on its first page that CIRI shall be allotted lands in Appendix C only "[t]o the extent the lands conveyed pursuant to paragraph [Appendix] A when added to lands otherwise heretofore received or to be received by such Village Corporations are insufficient to satisfy their statutory entitlement." *In this manner plaintiff was on notice that it was not entitled to select from Appendix C.* [emphasis added]

Since there is no credible legal justification supporting H.R. 2560, is there an equitable case for Congress to rewrite the 1976 Agreement to transfer national park lands to these Native corporations? Clearly, the answer is no.

CIRI and its villages have already received one of the most generous settlements in American Indian history. In 1971, ANCSA authorized transfer of 44 million acres and $1 billion to corporations formed by villages and regions. Unlike other Native corporations, CIRI received both land and a "property account" with which they have purchased over $236 million worth of surplus federal property. By 1994, according to CIRI's annual report to its 6,700 shareholders, the corporation held over one-half billion dollars in assets:

> CIRI owns and manages 924,000 acres of surface estate and 1.6 million acres of subsurface estate in Alaska. The company holds various royalty and working interests in several producing and prospective oil and gas fields, as well as significant coal, timber, and mineral properties in Alaska. The company also owns more than two dozen real estate properties throughout the United States.

As detailed in an audit submitted on April 25 to the Committee by the Bureau of Land Management, the legislative and administrative history of CIRI's entitlement is exceedingly complex and raises a number of unresolved legal questions. [See: Attachment A] Without doubt, CIRI has taken advantage of their opportunities and managed the land and property received under ANCSA (and its legislative progeny) to become one of the most powerful and successful corporations in Alaska.

Especially considering the history of generous treatment of CIRI by the Congress and the Department of the Interior, there is no valid public policy rationale for an outright give-away of 29,900 acres of national park lands. To the contrary, transferring these public lands into private corporate hands would be detrimental to the public interest in maintaining the integrity of Lake Clark National Park. As explained by the Assistant Secretary for Fish and Wildlife and Parks, this legislation threatens the coastal environment of Lake Clark National Park which provides vital habitat to a high density of brown bear, salmon, bald eagles and a multitude of other species:

> [H.R. 2560] would leave only about 10 percent of the original coastline in the park; the remaining few miles of coast offer poor public access as they are either steep cliffs or extensive mud flats. No longer would the park represent and protect the sweep of resources envisioned by Congress in 1980 [Alaska Lands Act] and enjoyed by the public for 16 years. As understood and agreed to before the park's establishment, about 40 percent of the park's original coastline was previously transferred to Native corporations under Appendix A of the 1976 Agreement. [See: Attachment B]

In summary, having failed to prevail with their legal case before the Department or in the courts, CIRI has appealed to Congress to rewrite the 1976 agreement and convey vital national park lands into private hands. This park land grab should be rejected by the House of Representatives.

GEORGE MILLER.

Attachments.

ATTACHMENT A

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SOLICITOR,
Washington, DC, April 25, 1996.

Hon. DON YOUNG,
Chairman, Committee on Resources,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: In November 1995, you asked the Bureau of Land Management (BLM) to conduct an audit of the land entitlements of the village corporations involved with H.R. 2560. The findings of that audit were reported to you by letter dated December 13, 1995. For a number of reasons, including a concern about how H.R. 2560 might impact the land entitlements of the affected regional corporation, Cook Inlet Region, Inc. (CIRI), BLM undertook a review of the land entitlements of CIRI. The CIRI review focused on CIRI's land entitlements under section 12(c) of the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1611(c), and the Terms and Conditions for Land Consolidation and Management in the Cook Inlet Region (T&C), as ratified by Public Laws 94–204 (89 Stat. 1145) and 94–456 (90 Stat. 1934).

The CIRI review brought to light some complex and difficult legal and accounting issues that must be given further consideration. While we cannot say at this time that CIRI has received more land benefits than it is entitled to receive under existing law, there is a possibility that the resolution of the outstanding legal and accounting issues could result in such a determination. The BLM plans to seek resolution of these issues from my Office or the Comptroller General in the near future. Summaries of certain of these issues, including property account management, conveyance of oil and gas rights, and implementation of Appendix A of the Deficiency Agreement are included in the report that accompanies this letter.

If, wholly apart from H.R. 2560, CIRI has already received more land than current law contemplates, litigation and perhaps legislation may be necessary to correct the situation.

If, on the other hand, resolution of these issues means that CIRI is entitled to additional land conveyances, existing law provides adequate mechanisms for conveying sufficient additional land to CIRI.

Thus, regardless of the outcome of the remaining issues in the review, no further legislation is needed in order for BLM to meet any remaining CIRI land entitlement.

If H.R. 2560 were enacted into law, it would make it far more likely that CIRI will be overconveyed. Besides the loss of public ownership on these overconveyed lands, this would result in preferential treatment compared to other Alaska Native corporations, which are receiving only the land entitlement provided in ANCSA.

As stated in our letter of December 13, 1995, we continue to have concerns about the possible impact of a lawsuit filed by the village corporation for Seldovia, Alaska, *Seldovia Native Association* v. *United States,* A91–076 Civ. (D. Alaska). One of Seldovia's arguments in that case is that it should not have to take its ANCSA section 12(b) land entitlements in the areas designated by Appendices A and C of the Deficiency Agreement of August 31, 1976, the lands involved in H.R. 2560. If Seldovia should ultimately prevail in its litigation, the 65,908.60 acres it was to receive under the Deficiency Agreement would be charged against CIRI's 12(c) land entitlement. CIRI will already be charged for a minimum of 23,456.57 acres of Appendix A lands if Seldovia does not prevail in its claim. The addition of 65,908.60 acres against CIRI's entitlement would result in a considerable overconveyance to CIRI.

Moreover, if H.R. 2560 were passed in its current form, it would fundamentally alter the structure of the land transfer process embodied in the Deficiency Agreement. As I stated in my testimony before your Committee, we believe the Deficiency Agreement plainly provided for conveyance of Appendix C lands only if the land from Appendix A were insufficient to satisfy village corporation entitlements. The attached documentation shows that Appendix A lands already included a minimum of 23,456.57 acres (but more likely 31,380.9 acres once Chickaloon has named its priorities) over what was needed for reconveyance to the village corporations.

H.R. 2560 would provide for conveyance of Appendix C land directly to the village corporations. This would correspondingly increase the amount of Appendix A land CIRI retains by 30,000 acres. Depending on the outcome of the outstanding legal and accounting issues involved in the CIRI review, the conveyance of any additional Appendix A lands to CIRI could result in, or add to an existing, overconveyance.

Because of the legal and accounting issues brought to light by the CIRI review, the issues raised in the *Seldovia* litigation, and the other reasons we have described, we recommend that the Committee not proceed with H.R. 2560 and section 5 of H.R. 2505. BLM has initiated efforts to achieve the necessary resolution and, as noted above, intends to submit the outstanding issues to the Comptroller General or my Office for review. In addition, we remain concerned about possible impacts from the *Seldovia* litigation. For

these reasons, as well as those stated in my previous testimony before the Committee, the Department continues to oppose H.R. 2560.

Sincerely,

JOHN D. LESHY, *Solicitor.*

ATTACHMENT B

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, April 12, 1996.

DEAR MR. MILLER: Thank you for your letter of April 2, 1996, asking for an analysis of the impacts of H.R. 2560 on Lake Clark National Park in Alaska.

This legislation would convey 29,500 acres of land within the exterior boundary of Lake Clark National Park to Native corporations. It would represent a clear breach of the 20-year-old agreement between the Department of the Interior and Cook Inlet Region, Inc. (CIRI), and would significantly diminish a vast and varied national park.

The 1976 agreement is a carefully negotiated land conveyance document, and represents choices made by the corporations and the Department. Its provisions are well-described in previous Department of the Interior testimony and communications with the committee. The Department of the Interior opposes H.R. 2560 on many grounds, including the following:

By re-ordering Alaska Native Claims Settlement Act decisions, the legislation would undermine a quarter-century of orderly implementation action, including many conveyances and agreements, for the benefit of particular corporations. It would result in serious consequences for Native, public and private land managers across Alaska who have made decisions based on the previous agreements. Lake Clark National Park was planned on the assumptions of the 1976 agreement.

The Bureau of Land Management has complied with the 1976 agreement. It has conveyed more than enough acreage to CIRI for reconveyance to the villages to meet the villages' land entitlement. CIRI has only conveyed about ⅓ of these lands to its member villages.

But the effects of H.R. 2560 extend far beyond the value of honoring an agreement and living with choices; significant public resources within Lake Clark National Park would be given away to private ownership without recompense. Today, Lake Clark National Park stretches from the Cook Inlet coast more than 100 miles to the north and west into the tundra hills on the Bristol Bay drainage. The park is a multi-faceted jewel in the crown, a unique composite of practically every ecosystem in Alaska—the marshes, cliffs, and forests of coast; the towering peaks, glaciers, lakes and alpine valleys of the park's high mountain spine; the wetlands bordering major rivers; and the dry tundra hills.

The legislation would leave only about 10 percent of the original coastline in the park; the remaining few miles of coast offer poor public access as they are either steep cliffs or extensive mud flats. No longer would the park represent and protect the sweep of resources envisioned by Congress in 1980 and enjoyed by the public

for 16 years. As understood and agreed to before the park's establishment, about 40 percent of the park's original coastline was previously transferred to Native corporations under Appendix A of the 1976 agreement. The Service does not contest those transfers and understands the corporations are free to develop those lands adjacent to the park as they wish.

Fish and wildlife habitat

The legislation would erode a portion of the NPS mission in the park's enabling legislation: "* * * to protect habitat for and populations of fish and wildlife including, but not limited to * * * brown/grizzly bears, bald eagles and peregrine falcons." Lower elevation lands, particularly those near coastal salmon streams, are generally rich in wildlife and tend to be richer in cultural resources than uplands. Public ownership, enjoyment and protection of these resources would be lost under this legislation.

The cost of Lake Clark National Park is rich in natural resources. While the higher elevations hold the breathtaking glaciers, jagged peaks and overwhelming vistas, it is the park's coastal environmental that teems with life.

Preliminary surveys suggest that the national park coastline in lower Cook Inlet supports the most concentrated population of brown bears on the west side of the inlet. In surveys of the salt marshes in Tuxedni Bay, an average of 68 brown bears were found; in similar habitat in Chinitna Bay, the average was 42 bears. This incredible density (about 9 bears per square mile) persists through June and early July. Later these bears disperse in the surrounding lands—lands that would largely go to corporate ownership under H.R. 2560. From August through October, large numbers of brown bears are observed feeding on salmon in most of the area streams.

Salmon spawn in eight streams in and near the land planned for transfer. These fish are popular among sport fishermen, and help form the mixed salmon stock for a large and profitable Cook Inlet commercial fishery. Private management of the timber and other resources along these fish streams could result in a loss of salmon habitat.

The coast and neighboring uplands proposed for conveyance provide nesting habitat for harlequin ducks, pigeon guillemots and bald eagles—all species affected by the *Exxon Valdez* oil spill—along with other gulls and peregrine falcons.

Upper Tuxedni Bay, near the land that would go to corporate ownership, is the only major pupping area for harbor seals along the west coast of lower Cook Inlet. The area also serves as a significant haul out for sea lions. Tuxedni and Chinitna bays are also home to about a third of the Beluga whales in Cook Inlet which feed on salmon and other marine life.

Commercial development

The lands proposed for conveyance could be used commercially by the new owners. The Service is not opposed to the idea of commercial use: inholders within the park already conduct commercial operations, as do holders of National Park Service incidental business permits. Indeed, we believe commercial operators, including Native corporations, should continue to be the primary providers of visitor

services in the park. However, park values and habitat will be lost with large-scale or otherwise incompatible commercial operations.

CIRI plans to operate a major gold mine and build a road to tidewater within Lake Clark National Park on lands obtained through other entitlements. CIRI's right to these lands is not in dispute. The conveyances proposed in H.R. 2560 includes subsurface rights that could be similarly exploited.

On Appendix A lands to the north of the proposed conveyances, Native village corporations are preparing for clear-cut logging in the broad valley containing Crescent River, and development of a log transfer facility on the north shore of Tuxedni Bay. The land included in H.R. 2560 would be available for logging if the corporations desired to do so. The corporate shareholders do not live near the affected lands.

Small-lot recreation subdivisions—with roads, airstrips and other developments—would be possible under the proposed private ownership. This has occurred on other Native corporation land within Lake Clark National Park.

Public use and access

As existing wildlife viewing opportunities become crowded, new destinations such as Lake Clark National Park will be used by the visitor industry. (McNeil River is limited by the State to 10 people per day; a lottery is used to fill the slots. Brooks River at Katmai National Park is at or above capacity for bear watching on most summer days.)

Silver Salmon Creek is used by large numbers of fishermen. August days have found up to 80 people fishing the creek, many of them having arrived via commercial air taxis or with fishing guides. Free public access along the creek banks may disappear with corporate ownership.

The national park coast offers long-term visitor use potential. Fifteen years ago, few people visited the Kenai Fjords National Park coast; today a fleet of private boats carry more than 100,000 tourists and residents along the coast to view marine mammals, glaciers, salmon and coastal wildlife. The Katmai National Park coast has been only rarely used during its 60 years in the National Park System. Boat and air tours now take a growing number of people there to view coastal bears, birds, marine mammals and other wildlife. The Lake Clark coast is about as far from the Alaska road system as Kenai Fjord; it is far easier to reach than Katmai. A tour boat operated out of Kenai in 1995, bringing visitors along the coast.

Fifty-two private businesses are licensed to operate in Lake Clark National Park, and all can operate on the park coast. Their existing business opportunities to bring clients to the coast—for fishing, beach hiking, and wildlife viewing—would end and would have to be renegotiated with corporate owners if the land transfer goes through. All but two of the NPS-licensed businesses are Alaska-based.

Flightseeing is increasingly popular along the national park coast. If the resource conditions change under corporate ownership—through timber harvest, mining, and oil and gas exploration,

or recreational subdivision—sightseeing opportunities may decrease.

Additionally, we are concerned about the effects that H.R. 2560 will have on the broader relationships between the National Park Service and Alaska Native corporations. In the last 2 years, we have made great progress in making Native corporations partners in the provision of visitor service concessions, facility development and employment, pursuant to the requirements of ANILCA. This progress is based both on law and common trust. H.R. 2560 rewrites longstanding agreements and diminishes the park values held dear by all Americans, in turn changing the law and breaking the trust.

In summary, H.R. 2560 would hurt the resources and integrity of Lake Clark National Park. The conveyance obligations of the Department of the Interior in the 1976 agreement have been met. Significantly, the native corporations have elected not to go to court to resolve their concerns over the Department of the Interior's interpretation of the legal agreement. Instead, they have asked Congress to enact legislation that would overturn the agreement to the detriment of the National Park system and the public that it serves.

We appreciate your continued interest, and remain available to answer any questions.

Sincerely,

GEORGE T. FRAMPTON, Jr.,
Assistant Secretary for Fish and Wildlife and Parks.

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